IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1120 of 1989

WITH

SPECIAL CIVIL APPLICATION No 1829 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALVANTBHAI D BAROT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1120, 1829 of 1989

MR DC RAVAL for Petitioner No. 1

MS ARCHANA RAWAL, AGP for Respondent No. 1.

MR SK PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 23/02/2004

COMMON ORAL JUDGEMENT

Since common issue is involved in both the petitions, they are being disposed of by this common judgment.

2. In both the petitions filed under Article 226 of the Constitution of India, the petitioners have prayed for the declaration to the effect that the impugned advertisement dated 16.01.1988 and the impugned Rule 3 (b) (i) of the Gujarat Educational Service Class - I (Administrative Branch) and Rule 2 of the Gujarat Civil Services Classification and Recruitment (General) (Amendment) Rules, 1973 and the impugned communication/order dated 27.01.1989 in as much as they render the petitioners unqualified for the post of General Educational Service Class - I (Administrative Branch) as illegal, unconstitutional, null and void and of no effect whatsoever.

3. The petitioners have further prayed for the direction to the respondents to call the petitioner for personal interview and to consider the petitioners' case for appointment to the post in Gujarat Educational Service Class I (Administrative Branch). The petitioners have also prayed for the direction to the respondents to appoint the petitioner to the above post on the basis of their merits and/or experience along with those who are selected pursuant to the advertisement dtd. 16.01.1988.

4. In S.C.A. No. 1120 of 1989, the petitioner was a direct recruitee to the post of Principal, Govt. Basic Training College at Kathalal, Dist. Kheda - a Class II post. The petitioner had applied for the next higher post in Class I and he was successful in the written test in which only 3% of the candidates were successful. Pursuant to the advertisement No.48 issued by the respondent No.2 i.e. Gujarat Public Service Commission in the local Newspaper, namely, Indian Express dated 16.01.1988 for filling up 11 posts in the Gujarat Public Service Class I (Administrative Branch), the petitioner had applied for the said post. However, the petitioner was not selected by the Commission for interview on the ground that the petitioner was not possessing the prescribed educational qualification and the prescribed experience. This was communicated to the petitioner vide order/communication dated 27.01.1989.

5. Similarly, in S.C.A. No. 1829/89, the petitioner had also applied for the higher post pursuant to the aforesaid advertisement appeared in the local

newspaper dated 16.01.1988 and the petitioner was informed vide order/communication dated 27.01.1989 by the respondent Commission that though the petitioner was having the prescribed educational qualification, he could not be called for personal interview as he did not possess the prescribed experience.

6. Mr. D.C. Raval, learned advocate appearing for the petitioners, in both these petitions, has mainly challenged the order/communication dated 27.01.1989 on the ground that the criteria laid down in the advertisement with regard to educational qualification and the experience on the basis of Rule 3 (b)(i) of Gujarat Educational Service Class - I (Administrative Branch) and Rule 2 of the Gujarat Civil Services Classification and Recruitment (General) (Amendment) Rules, 1973 are illegal, unconstitutional, null and void and hence, they are required to be struck down. He has further submitted that the said Rules resort to invidious and irrational classification and reject the qualified persons like the petitioner on the basis of micro distinctions that are not relevant to the requirements of the post. He has further submitted that present appointment pursuant to the advertisement in question was to be made in the Gujarat Education Service Class - I (Administrative Branch) and as far as the qualification in the field of education is concerned, it was merely insisting for a Bachelor Degree or an equivalent Degree or Diploma. There is no requirement that it must have been obtained with 1st Class or 2nd class. But as far as the companion qualification of Graduate or Post-Graduate Degree in Arts, Science, Commerce, Law or Agriculture is concerned, it provides either for the First Class Bachelor Degree or for Second Class Master's Degree. He has, therefore, submitted that a person like the petitioner in S.C.A. No. 1120/89 who has the Bachelor's degree in education but who has the Master's degree in Arts with Pass Class was rendered unqualified by these rules, though this was not a post in the field of Arts, Science, Commerce, Law or Agriculture. He has, therefore, submitted that the fact that one was Second Class in M.A. or Pass Class in M.A. would have no bearing with the objective of the selection to the post in the field of education. The classification of the candidates, therefore, between those who have Master's Degree with Second Class in the field of Arts, Science, Commerce, Law or Agriculture, and those who have Pass Class, is not a valid classification and it does not promote any relevant goals, and it has no rational nexus with the object of classification i.e. selecting best people to work in the field of education with the

requisite qualification in that field. Such a classification in fact is irrational and arbitrary in as much as the degree or diploma in the field of Education is given lesser value than the value attached to the qualification attained in the other field which may be only incidentally useful and relevant. The impugned Rules are, therefore, violative of Article 14 of the Constitution of India.

7. He has further submitted that even if the above classification is assumed to be valid, it is still inconsequential and it can only be described as unconstitutional micro classification based on micro distinctions. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of THE STATE OF JAMMU & KASHMIR V/S. TRILOKI NATH KHOSA AND OTHERS, A.I.R. 1974 S.C. 1 wherein it is held that " a classification found on substantial difference which distinguishes persons grouped together from those left out of the group and such differencential attributes must bear a just and rational relation to the object sought to be achieved. The Hon'ble Supreme Court has found the classification of degree-holders on the one hand and the diploma holders on the other hand to be a valid classification. The Hon'ble Supreme Court has warned that carrying such distinction too far would be violative of Article 14 of the Constitution of India. Though the petitioner did possess the qualification of M.A., was held unqualified merely because he did not have a Second Class in M.A. but has Pass Class and that too when he was not seeking appointment in the field of Arts, Commerce, Science, Law or Agriculture. He has, therefore, submitted that the irrationality and absurdity of Rule 3 of the impugned Rules writ large on the face of it and hence, they are violative of Article 14 of the Constitution of India.

8. Mr. Rawal has further relied on the decision of the Hon'ble Supreme Court in the case of MOHMMAD SHUJAT ALI V/S. UNION OF INDIA AND OTHERS, A.I.R. 1974 S.C. 1631 wherein it is held that "Mini-classification based on micro distinctions are false to our egalitarian faith and only substantial and straight-forward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

9. Mr. Rawal has further submitted that similarly Rule 2 of 1973 Amendment Rule is also irrational and arbitrary and violative of Articles 14 & 16 of the Constitution of India. He has submitted that under the relevant statutory recruitment Rules, the requirement is

that one should have seven years experience in the field of teaching, supervision or administration. The petitioner in S.C.A. No. 1120 of 1989 acquired the qualification of B.Ed. in the year 1978 and was having teaching and administrative experience of at least 10 years. But the respondent has proceeded on the footing that seven years of teaching or administrative experience can be counted only after he attained the full qualification. Thus, the petitioner attained the qualification of M.A. in the year 1986 and hence, the petitioner was treated unqualified as far as the requirement of experience was concerned. Mr. Rawal has,therefore, submitted that this was also irrational and absurd criteria. The petitioner was supposed to work in educational service and he acquired the required educational qualification in the year 1978. But by an artificial way of counting the experience, the petitioner's experience was counted only from 1986 when he obtained the Degree of M.A. which was not the primary qualification required in the field of education. Such a construction of Rule 2 of the 1973 Amendment Rules was, therefore, clearly irrational, arbitrary and violative of Articles 14 & 16 of the Constitution of India. The unconstitutionality of Rule 2 of the 1973 Amendment Rules is obvious from the fact that it classifies the candidates who obtained the experience before and after certain date. Such a classification does not promote any rational goals and has no nexus with the object of classification. The object of the classification is to have persons with certain kind of teaching or administrative experience and that very kind of experience was possessed by the petitioner and still he was held to be unqualified merely because he did not acquire that experience before certain date. In support of his submission, Mr. Rawal has relied on the observations made by this Court in the judgment dated 30.09.1975 in S.C.A. No. 1412 of 1975 wherein it is held that "it is just and proper if 7 years experience is computed from the date of obtaining B.T./B.Ed. degree. This will attract more persons for the post and give impetus to the officers in Government service who have obtained higher degree like Ph. D. The result of this strict rules of computing the prescribed length of service is that the candidates like the petitioners who have gained experience after having passed B.T. or B.Ed. examination are excluded." He has, therefore, submitted that the impugned Rule and the impugned communication are clearly illegal, unconstitutional and liable to be quashed and set aside.

10. Mr. S.K. Patel, learned advocate appearing for

respondent No.2 submitted that the Commission has undertaken the selection process on the basis of Rules framed by the State of Gujarat. He has further submitted that pursuant to the advertisement, the petitioners had applied for the said post. On the basis of the details provided by the petitioners in their application, the Commission scrutinized the educational qualification and experience of the petitioners. The petitioner in S.C.A. No. 1120 of 1989 passed B.A. in Arts in Pass Class and Master's Degree in Arts also in Pass Class. There is no provision in advertisement and recruitment rules to consider the above degree as educational qualification. Thus, the said petitioner was not fulfilling the required educational qualification. There is a provision in the advertisement of the said post that at least 7 years teaching, inspecting or administrative experience after obtaining the required educational qualification, was necessary. The said petitioner passed the last degree of M.A. in 1986 in Pass class which was not required educational qualification and the experience of Clerk from 01.07.1972 to 25.01.1984 was in lower capacity and could not be considered as administrative experience and, therefore, remaining teaching experience was less than 7 years and, therefore, the petitioner was not fulfilling the educational qualification and experience as required and hence, the action of the Commission in rejecting the application of the petitioner is just and proper and in accordance with the Recruitment Rules, 1973. Since the petitioner did not possess the requisite qualification and experience, the action of the respondent Commission should not, therefore, be questioned on the ground that the said action was based on the Recruitment Rules which are not legal or valid.

11. With regard to petitioner in S.C.A. No. 1989 of 1990 is concerned, Mr. Patel has submitted that as per the advertisement No.48, the candidates must have been gained experience after obtaining requisite educational qualification. Looking to the educational qualification, in 1980, the petitioner passed B.Sc. Degree with Second Class and B. Ed. with First Class only and hence, petitioner was not fulfilling the requisite educational qualification and was not called for interview in 1980 because he was lacking requisite educational qualification. It was not necessary at that time to scrutinize the petitioner's experience as he was not possessing the requisite qualification. The petitioner has passed Master's degree in education with First Class in the year 1982 and hence, he has fulfilled the requirement of educational qualification. But as per the

advertisement, he did not fulfil the required experience which ought to have been obtained after obtaining the educational qualification. So far as the requirement of experience is concerned, the Commission has to be satisfied that the candidate should possess the requisite qualification and experience as laid down in the advertisement. Since the experience criteria was not fulfilled by the petitioner, the respondent No.2 Commission has not issued any call letter inviting the petitioner for personal interview. He has, therefore, submitted that there is no justification in challenging the impugned action of the respondent Corporation.

12. Ms. Archana Rawal, learned AGP appearing on behalf of respondent No.1 has submitted that the challenge to the impugned Rules framed by the Govt. is concerned, she relied on the decision of the Hon'ble Supreme Court in the case of G. SUNDARESWARRAO V/S. GOVERNMENT OF A.P. & OTHERS, (1996) 8 S.C.C. 234 wherein it is held that "framing of rules being the legislative policy, it cannot be said that the rule is ultra vires or arbitrary." She has further relied on the decision of the Hon'ble Supreme Court in the case of SHESHRAO JANGUJI BAGDE V/S. BHAIYYA S/O. GOVINDRAO KARALE AND OTHERS, 1991 Supp. (1) S.C.C. 367 wherein it is held that "unless the context otherwise demands, it should be taken as "experience after acquiring the minimum qualifications required" and, therefore, necessarily will have to be posterior to the acquisition of the qualification. It is true that in case of promotion the same interpretation may not be just or warranted and for this reason, the Court has made it clear that it would depend upon the relevant provisions as also the particular type of experience which is required."

13. After having heard learned advocates appearing for the respective parties and after considering their rival submissions in the light of the requisite criteria laid down in the advertisement based on statutory Rules, this Court is of the view that challenge made to the impugned Rules is not sustainable. On the basis of the advertisement issued on 16.01.1988, the petitioners have applied. The criteria laid down in the said advertisement was based on the statutory Rules referred to hereinabove. The petitioners have not initially challenged the said rules. It is only when they were not called for personal interview and were informed by letter dated 27.01.1989 that they did not possess the prescribed

educational qualification and/or experience, the present petitions were filed before this Court. This Court has not granted any stay against the implementation of the said Rules. It was only observed by this Court that any selection that will be made by the G.P.S.C. for the posts in question would be subject to the result of the present petition. Both these petitions were ordered to be posted on 03.07.1989. More than 13 years have gone and still the petitions could not be taken up for final hearing. In the meanwhile, rules have been implemented and posts have also been filled in. Since this being the policy decision taken by the Govt. prescribing the requisite criteria for educational qualification and experience, the Court is rather slow in interfering in such legislative policy unless it is malafide or for certain extraneous considerations.

14. It is not the case of the petitioners in the present petitions that such a policy decision was taken by the State Government on the basis of certain extraneous consideration. If the petitioners do not possess the requisite criteria and on that ground, they are not called for personal interview, they should not find fault with the Rules which are framed by the State Government. The Rules are framed keeping in mind the object which is sought to be achieved. It cannot be said that the requisite criteria laid down in the Rules for the purpose of educational qualification has no bearing on the selection of the posts which were advertised. As far as the period to be reckoned for the purpose of requisite experience is concerned, even the Hon'ble Supreme Court has also laid down that it is to be considered from the date of the minimum educational qualification which is acquired by the candidate and hence, it cannot be counted from the period prior to the acquisition of the said educational qualification.

15. Taking over all view of the matter and considering the nature of the relief prayed for by the petitioners in these two petitions, which is against the legislative policy framed by the State, this Court is not inclined to interfere in the matter by exercising its extra ordinary, plenary, prerogative and equitable writ jurisdiction under Article 226 of the Constitution of India. Both these petitions are, therefore, dismissed. Rule discharged in each of the petition without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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